

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:

RUSTICK, LLC	:	Case Number 10-10902-TPA
Debtor	:	Chapter 11
RUSTICK, LLC,	:	The Honorable Thomas P. Agresti
Movant,	:	
v.	:	Related to Document Nos. 188, 251, and 254
MERRILL LYNCH PORTFOLIO MANAGEMENT, INC. and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as successor to J.P. Morgan Trust Company, National Association,	:	
ROSALIE BISHOP, TAX COLLECTOR; and	:	
GREAT AMERICA LEASING CORP.	:	
Respondents.	:	

**DEBTOR'S AND SECURED LENDER'S PROPOSED LIST OF CONSIDERATIONS
TO BE USED IN DETERMINING THE "SUCCESSFUL BID" AND
"BACK-UP BID" PURSUANT TO BID PROCEDURES ORDER**

Pursuant to the Court's *Order Approving Bid Procedures For Sale of Assets and Grant of Related Relief* entered on August 18, 2010 (Docket No. 251) (the "Bid Procedures Order")¹ and as required by the *Order* scheduling a hearing for August 26, 2010 (Docket No. 254), Rustick, LLC, the debtor in the above-captioned case (the "Debtor") and Merrill Lynch Portfolio Management, Inc. (the "Secured Lender") hereby submit a list of considerations to be used by

¹ Capitalized terms not defined herein shall have the meaning set forth in the Bid Procedures Order.

them in identifying the “Successful Bid” and “Back-Up Bid” and making their recommendations to the Court for approval of such choices at the Confirmation Hearing currently scheduled for October 21, 2010. The Debtor and Secured Lender note that the proposed list of considerations (i) is built on several assumptions on how they believe the bids may be proposed and assumes that the bids being considered are Qualified Bids; and (ii) may need to be revised and adapted to evaluate the actual bids once they are submitted by the Bid Deadline.

The Debtor and Secured Lender intend to utilize the following considerations in evaluating any bids that are submitted:

- (1) Whether the bidder is a strategic buyer (already involved in the ownership and/or operation of a landfill, with operational experience in running landfills) or is a financial/investment buyer (with little or no operational experience in running a landfill);
- (2) The amount and material terms of the bid (which shall be considered in the context of the overall ability of the bidder to consummate the sale, obtain the necessary regulatory approvals and provide the financial assurance for the transfer of the landfill permits);
- (3) Whether the consideration is to be provided in a form other than cash, and the ability to assess accurately the value of any such consideration;
- (4) The risks and timing associated with consummating a transaction with the bidder;
- (5) Whether the bid has excluded certain assets or executory contracts and leases;
- (6) The strength of the bidder’s evidence, satisfactory to the Debtor and the Secured Lender, demonstrating that the bidder has the financial resources sufficient to finance the purchase and operation of the Assets proposed to be acquired at the

proposed purchase price (*e.g.*, cash on hand or a binding financing commitment from an established and financially sound financial institution or investments fund);

- (7) Whether the bidder has the ability to obtain the necessary regulatory approvals and provide the financial assurance required for the transfer of the Debtor's landfill permits;
- (8) The strength of the Qualified Bidder's showing of adequate assurance of future performance to counterparties to any executory contracts and unexpired leases proposed to be assumed by the Debtor and assigned to the bidder;
- (9) Whether the bidder has the ability to consummate the transactions proposed in the purchase agreement in the time frame anticipated in the Plan and DIP Financing;
- (10) Whether the bid has any terms that may affect the ability, speed and certainty of consummating the sale and confirming the Plan;
- (11) The extent to which the bid modifies the terms of the Proposed Agreement;
- (12) Whether the bid complies with the terms and requirements set forth in the Bid Procedures Order; and
- (13) Any other factors that the Debtor and Secured Lender may deem relevant to the sale and confirmation of the Plan, including those factors affecting the certainty and speed of consummating the sale.

Respectfully submitted,

BY: /s/ Lawrence C. Bolla

Dated: August 24, 2010

**QUINN, BUSECK, LEEMHUIS,
TOOHEY & KROTO, INC.**

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Counsel for Debtor, Rustick, LLC

and

BY: /s/ Guy C. Fustine

Dated: August 24, 2010

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/s/ J. Robert Stoll

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Document #528287, v1

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ROSALIE BISHOP, TAX COLLECTOR; and	:	
GREAT AMERICA LEASING CORP.	:	
Respondents.	:	

CERTIFICATE OF SERVICE

I, the undersigned, certify that I served, or caused to be served, on the 25th day of August, 2010, a copy of the Debtor's and Secured Lender's Proposed List of Considerations to be Used in Determining the "Successful Bid" and "Back-up Bid" Pursuant to Bid Procedures Order upon each of the following persons and parties in interest at the address shown on the attached list.

Respectfully submitted,

BY: /s/ Lawrence C. Bolla

Dated: August 24, 2010

**QUINN, BUSECK, LEEMHUIS,
TOOHEY & KROTO, INC.**

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Rustick, LLC
Case No. 10-10902 TPA
Service List

The following parties received notice of the filing via the CM/ECF System and will not receive a paper copy of the filing:

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Respondents not listed above:

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